

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

**SENTRY INSURANCE, A MUTUAL
COMPANY**

Plaintiff

VERSUS

**SOUTHWEST LOUISIANA HOSPITAL
ASSOCIATION, d/b/a LAKE CHARLES
MEMORIAL HOSPITAL AND R. DALE
BERNAUER, M.D.**

Defendants

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CIVIL ACTION NO. 2:06CV0570

JUDGE MINALDI

MAGISTRATE METHVIN

**MEMORANDUM IN SUPPORT OF
MOTION TO ABSTAIN AND DISMISS OR, IN THE
ALTERNATIVE, TO ABSTAIN AND STAY THIS CASE**

MAY IT PLEASE THE COURT:

The grounds for a dismissal or at least a stay of this suit are very similar to those submitted by the Defendants in *CCN Managed Care, Inc. vs. Dr. Fayez Shamieh, AMC, et al*, Docket No. 2:06-cv-00519, in their Motion to Abstain and Dismiss or, in the alternative, to Abstain and Stay and supporting Memorandum dated April 20, 2006 which is pending for decision before Judge Trimble [attached in globo as Exhibit A].

As in the *CCN* case, the parties filing actions like this in federal court are trying to avoid any progress in a Louisiana state court proposed plaintiff and defendant class action entitled *Clark A. Gunderson, M.D. (A Medical Corp.), et al v. F. A. Richard & Associates, Inc., et al*, Docket No. 2004-2417, 14th JDC, Calcasieu Parish, Louisiana. The proposed class defendants in *Gunderson* previously stymied that case for about a year in federal court by means of a removal effort, which Judge Trimble held to be unfounded. Those same parties have coordinated an

effort to forestall the Louisiana Third Circuit Court of Appeal and, as necessary, the Louisiana Supreme Court, from resolving important state law issues. This rash of new declaratory judgment actions is clearly an effort to avoid ordinary abstention rules, and stall legitimate state court litigation, by the coordinated action of numerous parties that are either proposed class defendants, or putative class defendants, or parties potentially impacted by the claims in the *Gunderson*. Accordingly, these motions to stay those efforts reasonably seek the appropriate relief.

As noted in the *CCN* Motion and Memorandum, some of the pertinent questions of law are also the subject of an appeal being taken to the Fifth Circuit in the case of *Liberty Mutual Insurance Company v. Gunderson, et al*, Civil Action No. 04-cv-2405. As suggested to Judge Trimble in the *CCN* case, an additional or alternative good reason to at least stay any activity in these similar cases is the need for the Fifth Circuit to address some novel questions, which may well be first addressed by the Louisiana appellate courts.

For all these reasons, further explained in the *CCN* motion and memo, Defendants ask for a dismissal without prejudice or at least a stay.

Respectfully submitted,

COX, COX, FILO & CAMEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum in Support of Motion to Abstain and Dismiss or, in the Alternative, to Abstain and Stay this Case was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the court's electronic filing system to:

Terry Christovich Gay
Kevin Richard Tully
John S. Bradford
Thomas A. Filo

Lake Charles, Louisiana, this 10th day of May, 2006.

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